Filed 4/3/12 Watson v. RMS residential Properties CA2/5

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

| | |
|---|---|
| JACQUELINE WATSON,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>RMS RESIDENTIAL PROPERTIES, LLC, et al.,<br><br>Defendants and Respondents. | B231536<br><br>(Los Angeles County Super. Ct. No. BC366806) |

APPEAL from a judgment of the Superior Court of Los Angeles County. Kevin Brazile, Judge. Affirmed.

John De Hart for Plaintiff and Appellant.

Wright, Finlay & Zak, Charles C. McKenna, Peter M. Watson for Defendant and Respondent.

---

Jacqueline Watson, as administrator of the estate of Elizabeth Williams, appeals the judgment entered in favor of RMS Residential Properties, LLC (RMS), following the latter's successful motion for summary judgment. Finding no error, we affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

On February 23, 2007, Elizabeth Williams filed suit to quiet title to her real property located at 3026 West View Street in Los Angeles (the Property). The complaint alleged that a 2004 grant deed transferring the Property to her son David Williams contained her forged signature and that, as a consequence, all subsequent transfers of the property were void. Ms. Williams sued her son, the person who notarized the fraudulent grant deed, the current owner of record of the Property, and the lenders and other companies connected with the various mortgages placed on the Property in 2004 and thereafter. In addition to an order quieting title to the Property, Ms. Williams sought compensatory and punitive damages, interest, attorney fees and costs of suit.

New Century Mortgage Corporation (New Century), one of the lender defendants, filed a Notice of Stay of Proceedings on June 14, 2007, pursuant to its bankruptcy petition. Ms. Williams died in 2009, while the stay remained in effect. In March 2010, appellant, Ms. Williams's niece and the administrator of her estate, successfully moved the court to substitute in as plaintiff. At approximately the same time, respondent RMS intervened in the case, as it had become the owner of the New Century loan at issue in the lawsuit.[1]

On March 15, 2010, shortly after Watson's substitution, appellant's attorney, Richard Rosiak, filed a Motion to Withdraw. On April 9, 2010, RMS served Requests for Admissions on appellant, which appellant promptly received from her counsel; responses were due on May 11, 2010. Counsel's Motion to Withdraw was granted on May 20, 2010, a fact known to appellant.

---

[1] This appeal concerns appellant's claims against RMS only.

By letter dated August 17, 2010, RMS advised appellant that its Requests for Admissions were overdue, and requested a prompt response.[2] In October, after no response had been received, RMS filed a Motion for Order Establishing Admissions, which unopposed motion was granted on November 4, 2010. RMS subsequently filed a Motion for Summary Judgment, to be heard on January 28, 2011, based on the matters deemed admitted.

Appellant retained new counsel shortly before the summary judgment motion was to be heard. Appellant did not oppose the motion, but on the date of the hearing, filed ex parte motions To Continue the Hearing on Summary Judgment and To Set Aside the Order Establishing Admissions, and a Request to Shorten Time for Notice of and Motion to Continue Trial, which was scheduled to commence 10 days later.

The trial court denied all three ex parte applications, granted RMS's summary judgment motion, and entered judgment in favor of RMS.

Appellant timely appealed the judgment.

## CONTENTIONS

Appellant makes three assignments of error on appeal: (1) "The trial court abused its discretion in denying [her request] to continue the summary judgment hearing;" (2) appellant "was barred by law from representing the Williams Estate as successor in interest in this case; thus the court's order appointing her is void or voidable;" and (3) "The trial court failed to articulate findings of the essential elements related to the claims and orders requested within the motions to [] continue the summary judgment hearing and [] to set aside the order deeming the requests for admissions admitted." We consider each contention in turn.

---

[2] RMS's Motion to Augment the Record with this letter, together with the proof of service, is granted.

## DISCUSSION

1. *Denial of motion to continue hearing on summary judgment*

As appellant acknowledges, this court reviews the trial court's denial of her request to continue the summary judgment hearing for an abuse of discretion. (*Combs v. Skyriver Communications, Inc.* (2008) 159 Cal.App.4th 1242, 1270.) We find no abuse of discretion here.

Appellant's declaration failed to explain[3] why she did not retain new counsel to prosecute the action until the week before the January 28, 2011 summary judgment hearing, notwithstanding that she had known of Mr. Rosiak's intention to be relieved for some time before he actually withdrew in May 2010. Neither did appellant explain why she permitted the case to languish during the period that she was unrepresented by counsel. For example, appellant submitted a declaration in which she averred that she had completed handwritten responses to RMS's Requests for Admissions, a copy of which she attached to the declaration, shortly after receiving them from Mr. Rosiak in April 2010. However, when she learned from defense counsel, by letter dated August 17, 2010, that Mr. Rosiak had not forwarded her responses to him, appellant did nothing. She holds Mr. Rosiak responsible for the fact that the Requests for Admissions were deemed admitted three months after defense counsel's August 17 letter, and after she failed to oppose RMS's motion requesting an order to that effect.

In sum, the trial court acted well within its discretion in denying appellant's motion to continue the summary judgment hearing.

---

[3] Of course, the injury appellant's son suffered in June 2010 explains and excuses appellant's lack of diligence at that time and for some period thereafter. It does not, however, postpone indefinitely her obligation to prosecute this lawsuit on behalf of Ms. Williams's estate, or to resign the appointment. (See Prob. Code, § 8520.)

*2. Grant of motion to substitute appellant as the successor in interest for deceased plaintiff Elizabeth Williams*

Appellant next argues that the trial court erred in granting her motion to be substituted into this lawsuit in place of the deceased plaintiff, Ms. Williams. After noting that she was executor of Ms. Williams's estate, she cites *Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, 548 to argue that her substitution into the lawsuit in place of Ms. Williams put her "in the untenable (illegal) position of acting as an attorney In Pro Per." The argument lacks merit.

*Ziegler v. Nickel, supra,* holds that a person who acts as plaintiff in a representative capacity, rather than on his or her own behalf, must be either a licensed attorney or represented by counsel. (*Id.* at pp. 547-549; see also, *J.W. v. Superior Court* (1993) 17 Cal.App.4th 958, 967.) Appellant, as plaintiff herein, was acting in a representative capacity on behalf of the estate. She was therefore required either to be a licensed attorney or to hire counsel to represent her; she hired counsel to represent her. There was nothing untenable, illegal or improper in the court's order substituting appellant into the case.

*3. Statement of decision*

Finally, citing *Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1134, appellant maintains that the trial court erred in failing to articulate "the critical findings of facts related to the relief requested in any of the aforementioned motions." The contention is frivolous. No statement of decision was requested at the hearing on appellant's ex parte motions, and none was required. Appellant cites no authority for the proposition that a trial court must explain to a litigant why it has denied her ex parte request for a continuance filed on the date of the hearing sought to be continued by her attorney, newly-retained eight months after her prior counsel was formally relieved of his representation.

## DISPOSITION

The judgment is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.